

AMENDED IN SENATE JUNE 27, 2013

AMENDED IN ASSEMBLY MAY 7, 2013

AMENDED IN ASSEMBLY APRIL 24, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1329

**Introduced by Assembly Member V. Manuel Pérez
(Principal coauthor: Assembly Member Alejo)**

February 22, 2013

An act to amend Sections 25135.9, 25161, 25162, and 25178 Section 25162 of, and to add Sections 25135.11 and 25150.9 Section 25180.2 to, the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1329, as amended, V. Manuel Pérez. Hazardous—waste: environmental justice: *waste*.

(1) Existing law requires the California Environmental Protection Agency to develop a strategy for identifying and addressing any gaps in existing programs, policies, or activities that may impede the achievement of environmental justice, as defined, and requires each board, department, and office within the agency to review its programs, policies, and activities and identify and address any gaps in its existing programs, policies, or activities that may impede the achievement of environmental justice.

Existing law requires the Department of Toxic Substances Control to prepare and adopt a state hazardous waste management plan by November 30, 1991, and to revise the plan at least once every 3 years.

~~The state plan is required to be prepared in conjunction with, and take into account, certain local hazardous waste management plans.~~

~~This bill would instead require the department to prepare and adopt, by January 1, 2016, a state hazardous waste management plan to address the matter of environmental justice in the management of hazardous waste and to serve as a comprehensive and enforceable planning document for the state. The bill would specify the elements required to be included in the plan and would require the plan to be reviewed and revised, as specified. The bill would require the Director of Toxic Substances Control to approve the plan and to submit the plan to specified committees of the Legislature.~~

~~The bill would require the department to adopt regulations to ensure that minority populations and low-income populations are not disproportionately impacted by the adverse human health, social, economic, and environmental effects of the hazardous waste managed pursuant to the hazardous waste control law. Since a violation of the regulations adopted pursuant to the hazardous waste control law is a crime, the bill would impose a state-mandated local program. The bill would allow a person to commence a civil action on that person's own behalf against a person who is alleged to be in violation of those regulations or alleging a failure by the department to perform an act or duty pursuant to specified provisions.~~

~~(2) Existing law requires the department to post certain information on or before January 1 of each odd-numbered year on its Internet Web site.~~

~~This bill would revise the information required to be posted and would require the information to be searchable and translated into Spanish.~~

~~(1) Existing law requires the Department of Toxic Substances Control to enforce the standards in the hazardous waste control laws and the regulations adopted to implement those laws. A violation of the hazardous waste control laws is a crime.~~

~~This bill would require the department to prioritize an enforcement action affecting communities that have been identified by the California Environmental Protection Agency as being the most impacted environmental justice communities.~~

~~(3)~~

~~(2) Existing law prohibits a person from transporting hazardous waste, as specified, if the final destination of the transported hazardous waste is in a state other than this state or in a territory of the United States, unless the facility is issued a permit pursuant to the federal~~

Resource Conservation and Recovery Act of 1976 or the facility is authorized by the state to accept that waste. ~~Existing law requires the department to develop a specified database regarding hazardous waste shipped in and out of state.~~

This bill would instead prohibit a person from transporting hazardous waste, as specified, if the final destination of the transported hazardous waste is a domestic facility outside the jurisdiction of the state unless certain conditions apply to the facility, including whether the facility is subject to a cooperative agreement, as specified. ~~The bill would revise the information required to be included in the department's database with regard to hazardous waste shipped in and out of the state's jurisdiction. By expanding the scope of a crime, this bill would impose a state-mandated local program.~~

(4)

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Legislature finds and declares all of the following:~~
- 2 ~~(a) All hazardous waste landfill facilities and the majority of~~
- 3 ~~other types of hazardous waste facilities in the state are located in~~
- 4 ~~or near low-income Latino communities. The siting and operation~~
- 5 ~~of the state's hazardous waste facilities near low-income Latino~~
- 6 ~~communities disparately and adversely affects those communities,~~
- 7 ~~in violation of both Section 11135 of the Government Code and~~
- 8 ~~Title VI of the Civil Rights Act (42 U.S.C. Sec. 2000d and~~
- 9 ~~following):~~
- 10 ~~(b) Under Section 11135 of the Government Code and Title VI~~
- 11 ~~of the Civil Rights Act, the Department of Toxic Substances~~
- 12 ~~Control has a responsibility to prevent racial discrimination in the~~
- 13 ~~siting and operation of hazardous waste disposal facilities.~~
- 14 ~~(c) California needs a statewide hazardous waste disposal and~~
- 15 ~~management plan to promote environmental justice, thereby~~
- 16 ~~protecting the civil rights of minority residents in the communities~~

1 targeted for hazardous waste disposal facilities and other types of
2 hazardous waste management facilities.

3 *SECTION 1. The Legislature finds and declares all of the*
4 *following:*

5 *(a) California's public health and environmental protection*
6 *programs, policies, and activities should be conducted in a manner*
7 *that promotes equity and affords fair treatment, accessibility, and*
8 *protection for all residents, regardless of race, age, culture,*
9 *income, or geographic location.*

10 *(b) To that end, the California Environmental Protection Agency*
11 *has worked for a decade to develop and implement an*
12 *environmental justice initiative that ensures fair and equitable*
13 *environmental policies for all residents.*

14 *(c) Through that initiative, the California Environmental*
15 *Protection Agency has worked to identify those communities that*
16 *are most impacted by pollution and environmental contamination.*

17 *(d) California needs to provide the greatest level of attention*
18 *and protection to those communities that are at the greatest risk*
19 *from those impacts.*

20 *SEC. 2. Section 25180.2 is added to the Health and Safety*
21 *Code, to read:*

22 *25180.2. The department shall prioritize an enforcement action*
23 *authorized by this chapter affecting communities that have been*
24 *identified by the California Environmental Protection Agency as*
25 *being the most impacted environmental justice communities.*

26 ~~SEC. 2. Section 25135.9 of the Health and Safety Code is~~
27 ~~amended to read:~~

28 ~~25135.9. (a) For purposes of this section, the following~~
29 ~~definitions shall apply:~~

30 ~~(1) "Environmental justice" means the fair treatment of people~~
31 ~~of all races, cultures, and incomes with respect to the development,~~
32 ~~adoption, implementation, and enforcement of environmental laws,~~
33 ~~regulations, and policies.~~

34 ~~(2) "Hazardous waste landfill facility" means a hazardous waste~~
35 ~~facility that disposes of hazardous waste to land, as specified in~~
36 ~~Section 25174.1.~~

37 ~~(b) The department shall, pursuant to this section and in~~
38 ~~accordance with the requirements of subdivision (d) of Section~~
39 ~~25170, prepare and adopt a hazardous waste management plan~~
40 ~~that would address matters of environmental justice in the~~

1 management of the state's hazardous waste. The state's hazardous
2 waste management plan adopted pursuant to this section shall serve
3 as a comprehensive and enforceable planning document for the
4 state to ensure that minority populations and low-income
5 populations are not disproportionately impacted by the adverse
6 human health, social, economic, and environmental effects of
7 hazardous waste management, including disposal.

8 (e) The state hazardous waste management plan shall be
9 prepared and adopted by the department on or before January 1,
10 2016, shall be reviewed annually, and shall be revised to reflect
11 new information at least once every three years.

12 (d) In preparing and adopting the state hazardous waste
13 management plan, and in revising the plan thereafter, the
14 department shall do all of the following:

15 (1) Publish the draft plan or the revised plan in English and
16 Spanish and make it available to the public for review and comment
17 at least three months before final adoption.

18 (2) Conduct workshops and at least six public hearings on the
19 plan or the draft revised plan, one in the southern part of the state,
20 one in the central part of the state, one in the northern part of the
21 state, and one in each community that hosts a hazardous waste
22 landfill facility, to solicit the views of the public, local government,
23 regional councils of governments, and interested parties.

24 (3) Include in the final state hazardous waste management plan
25 and in revisions of the plan, a summary of the comments received
26 and the department's responses to those comments.

27 (e) The state hazardous waste management plan, and each
28 revision of the plan, shall include, but need not be limited to, all
29 of the following elements:

30 (1) An analysis of the hazardous waste streams produced in the
31 state, an accounting of the volumes of hazardous waste produced
32 in each county and region of the state, by type of waste, and
33 estimates of the expected rates of hazardous waste production, by
34 type of waste, during the next five years.

35 (2) An inventory of existing and planned hazardous waste
36 facilities that handle, treat, recycle, dispose, or otherwise manage
37 hazardous wastes produced in the state, which shall include all of
38 the following:

1 ~~(A) The racial and socioeconomic composition of populations~~
2 ~~within one-half-mile, one-mile, and five-mile radii around each~~
3 ~~existing or planned hazardous waste facility.~~

4 ~~(B) A description of each facility and a full and complete~~
5 ~~summary of the facilities' compliance history, including, but not~~
6 ~~limited to, the enforcement actions taken by the department or any~~
7 ~~other state department or board that is within the California~~
8 ~~Environmental Protection Agency, and the penalties imposed~~
9 ~~pursuant to those enforcement actions.~~

10 ~~(C) A determination of the capacity of each existing or planned~~
11 ~~hazardous waste facility to handle, treat, recycle, dispose, or~~
12 ~~otherwise manage the waste streams it is authorized to handle,~~
13 ~~treat, recycle, dispose, or otherwise manage.~~

14 ~~(D) A description of the current progress and status of each~~
15 ~~planned hazardous waste facility in achieving operational status,~~
16 ~~including a timetable for becoming operational.~~

17 ~~(3) An assessment of the need for additional hazardous waste~~
18 ~~facilities to manage the volumes of hazardous waste currently~~
19 ~~produced or which are expected to be produced during the next~~
20 ~~20 years.~~

21 ~~(4) An identification of the areas or regions of the state where~~
22 ~~new or expanded capacity to manage hazardous wastes are needed~~
23 ~~and the types of facilities that should be sited and constructed.~~

24 ~~(5) A description of the enforceable policies, programs,~~
25 ~~incentives, requirements, prohibitions, or other measures necessary~~
26 ~~to eliminate the disproportionate impact of hazardous waste~~
27 ~~management, including disposal, on low-income and minority~~
28 ~~populations, which may include specific measures to reduce the~~
29 ~~amount of hazardous waste generated within the state.~~

30 ~~(6) A statement of goals, objectives, and policies currently in~~
31 ~~effect, or in the process of development, that address environmental~~
32 ~~justice in the siting and operation of hazardous waste facilities and~~
33 ~~the management of hazardous wastes during the next five years.~~

34 ~~(7) A schedule of enforceable actions, including specific dates,~~
35 ~~for carrying out state, regional, and local actions to implement the~~
36 ~~state hazardous waste management plan.~~

37 ~~(f) The director shall approve a hazardous waste management~~
38 ~~plan prepared in accordance with this section and shall submit the~~
39 ~~approved plan to the Assembly Committee on Environmental~~

~~Safety and Toxic Materials and the Assembly Committee on Budget.~~

~~SEC. 3. Section 25135.11 is added to the Health and Safety Code, to read:~~

~~25135.11. (a) (1) A person may commence a civil action on that person's own behalf against a person who is alleged to be in violation of the regulations adopted pursuant to Section 25150.9.~~

~~(2) A person may commence a civil action on that person's own behalf alleging a failure by the department to perform an act or duty required under Section 25135.9 or 25150.9 and that is not otherwise a discretionary act or duty.~~

~~(b) The superior court shall have jurisdiction to enforce a regulation specified in paragraph (1) of subdivision (a), or to order the department to perform an act or duty specified in paragraph (2) of subdivision (a), and to apply any appropriate civil penalties.~~

~~(c) In an action brought pursuant to paragraph (2) of subdivision (a), the inquiry shall extend to the question of whether the department has proceeded without, or in excess of, its jurisdiction, and whether there was any prejudicial abuse of discretion. The court shall find that an abuse of discretion has been established if the department has not proceeded in the manner required by law; if the act or duty is not supported by the department's findings, or if the department's findings are not supported by the evidence. If it is claimed that the findings are not supported by the evidence, the court shall find that an abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence.~~

~~SEC. 4. Section 25150.9 is added to the Health and Safety Code, to read:~~

~~25150.9. Upon the approval of the state hazardous waste management plan pursuant to subdivision (f) of Section 25135.9, the department shall adopt regulations to implement the plan to ensure that minority populations and low-income populations are not disproportionately impacted by the adverse health, social, economic, and environmental effects of the hazardous waste managed pursuant to this chapter.~~

~~SEC. 5. Section 25161 of the Health and Safety Code is amended to read:~~

~~25161. (a) The department may adopt and enforce those regulations, regarding a uniform program for hazardous waste~~

1 transportation, that are necessary and appropriate to achieve
2 consistency with the findings made by the Federal Highway
3 Administration and the federal Department of Transportation
4 pursuant to Chapter 51 (commencing with Section 5101) of Title
5 49 of the United States Code.

6 (b) The department shall adopt and enforce all rules and
7 regulations that are necessary and appropriate to accomplish the
8 purposes of Section 25160.

9 (c) The department shall develop a database that tracks all
10 hazardous waste shipped in and out of the state's jurisdiction for
11 handling, treatment, storage, disposal, or any combination thereof,
12 which includes all of the following information:

13 (1) The jurisdiction receiving the waste.

14 (2) Month and year of shipment.

15 (3) Type of hazardous waste shipped.

16 (4) The manner in which the hazardous waste was handled at
17 its final destination, such as incineration, treatment, recycling, land
18 disposal, or a combination thereof.

19 (d) The department shall include in the biennial report specified
20 in Section 25178 all of the following information:

21 (1) The total volume in tons of hazardous waste generated in
22 the state and shipped offsite for handling, treatment, storage,
23 disposal, or any combination thereof.

24 (2) The total volume in tons of hazardous waste generated in
25 the state and shipped in and out of the state for handling, treatment,
26 storage, disposal, or any combination thereof, including all of the
27 following information:

28 (A) The jurisdiction receiving the hazardous waste.

29 (B) Month and year of shipment.

30 (C) Type of hazardous waste shipped.

31 (D) The manner in which the hazardous waste was handled at
32 its final destination, such as incineration, treatment, recycling, land
33 disposal, or a combination thereof.

34 SEC. 6.

35 SEC. 3. Section 25162 of the Health and Safety Code is
36 amended to read:

37 25162. (a) A person shall not transport hazardous waste on
38 the highways of this state, or deliver to a railroad or vessel
39 hazardous waste for transport if the final destination of the

1 transported hazardous waste is a domestic facility outside the
2 jurisdiction of the state, unless one of the following applies:

3 (1) The facility has been issued a permit pursuant to subsection
4 (c) or (g), or has been granted authority to operate pursuant to
5 subsection (e) of Section 3005 of the federal act (42 U.S.C. Sec.
6 6925) by either of the following:

7 (A) The United States Environmental Protection Agency.

8 (B) The state in which the facility is located, if the state has
9 authorization to operate a hazardous waste program pursuant to
10 Section 3006 of the federal act (42 U.S.C. Sec. 6926).

11 (2) The facility is authorized by the state in which it is located,
12 pursuant to the applicable laws or regulations of that state, to accept
13 the transported hazardous waste for transfer, handling, recycling,
14 storage, treatment, or disposal.

15 (3) The facility is subject to a cooperative agreement executed
16 pursuant to Section 25198.3.

17 (b) A person shall not transport hazardous waste on the highways
18 of this state, or deliver to a railroad or vessel hazardous waste for
19 transport, if the final destination of the transported hazardous waste
20 is a facility that is located on a site that has been listed on the
21 National Priorities List established pursuant to Section 105 of the
22 Comprehensive Environmental Response, Compensation, and
23 Liability Act of 1980, as amended (42 U.S.C. Sec. 9605(a)(8)(B)).

24 (c) A person who knowingly transports or causes the
25 transportation of, or who reasonably should have known that the
26 person was causing the transportation of, hazardous waste in
27 violation of subdivision (a) or (b) shall, upon conviction, be subject
28 to the penalties specified in subdivision (a) of Section 25191.

29 (d) A person who knowingly delivers, or arranges the delivery
30 of, hazardous waste to another person for transport in violation of
31 subdivision (a) or (b) shall, upon conviction, be subject to the
32 penalties specified in subdivision (a) of Section 25191.

33 (e) A person shall not transport hazardous waste that is subject
34 to the requirements of Section 3017 of the federal act (42 U.S.C.
35 Sec. 6938) on the highways of this state or deliver to a railroad or
36 vessel any of this hazardous waste for transport, if the final
37 destination of the transported hazardous waste is a foreign country,
38 unless the shipment is in compliance with the applicable regulations
39 adopted pursuant to Section 25150.2 and either of the following
40 conditions is met:

(1) A copy of the foreign country's written consent to receive the hazardous waste, or a copy of the EPA Acknowledgement of Consent, as defined in Section 262.51 of Title 40 of the Code of Federal Regulations, is attached to the manifest required by this article.

(2) The hazardous waste shipment is in compliance with the terms of an international agreement between the United States and the receiving foreign country, as provided in subsection (f) of Section 3017 of the federal act (42 U.S.C. Sec. 6938 (f)).

(f) A person who knowingly violates, or who reasonably should have known that the person was violating, subdivision (e) shall, upon conviction, be subject to the penalties specified in subdivision (a) of Section 25191.

~~SEC. 7. Section 25178 of the Health and Safety Code is amended to read:~~

~~25178. On or before January 1 of each odd-numbered year, the department shall post on its Internet Web site and translate into Spanish, at a minimum, all of the following:~~

~~(a) The status of the regulatory and program developments required pursuant to legislative mandates.~~

~~(b) The status of the hazardous waste facilities permit program; that shall include all of the following information:~~

~~(1) A description of the final hazardous waste facilities permit applications received.~~

~~(2) A searchable list of final hazardous waste facilities permits issued to date.~~

~~(3) A searchable list of final hazardous waste facilities permits yet to be issued.~~

~~(4) A complete description of the reasons why the final hazardous waste facilities permits yet to be issued have not been issued.~~

~~(c) The status of the hazardous waste facilities siting program.~~

~~(d) The status of the hazardous waste abandoned sites program.~~

~~(e) A searchable list of enforcement actions taken by the department pursuant to this chapter and other enforcement actions relating to hazardous waste management. The list shall specify whether the violations have been corrected and shall include Internet Web links to inspection reports, draft orders, final orders, and enforcement actions taken by other agencies.~~

~~(f) A searchable list of significant noncomplying operations.~~

1 ~~(g) Summary data on annual quantities and types of hazardous~~
2 ~~waste generated, transported, treated, stored, and disposed.~~

3 ~~(h) Summary data regarding the onsite and offsite disposition~~
4 ~~of hazardous waste.~~

5 ~~(i) Research activity initiated by the department.~~

6 ~~(j) Regulatory action by other agencies relating to hazardous~~
7 ~~waste management.~~

8 ~~(k) A revised listing of recyclable materials showing any~~
9 ~~additions or deletions to the list prepared pursuant to Section 25175~~
10 ~~that have occurred since the last report.~~

11 ~~(l) Any other data considered pertinent by the department to~~
12 ~~hazardous waste management.~~

13 ~~(m) The information specified in subdivision (c) of Section~~
14 ~~25161, paragraph (4) of subdivision (b) of Section 25197.1,~~
15 ~~subdivision (c) of Section 25354, and Section 25334.7.~~

16 ~~(n) A status report on the cleanup of the McColl Hazardous~~
17 ~~Waste Disposal Site in Orange County.~~

18 ~~SEC. 8. The provisions of this act are severable. If any~~
19 ~~provision of this act or its application is held invalid, that invalidity~~
20 ~~shall not affect other provisions or applications that can be given~~
21 ~~effect without the invalid provision or application.~~

22 ~~SEC. 9.~~

23 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
24 ~~Section 6 of Article XIII B of the California Constitution because~~
25 ~~the only costs that may be incurred by a local agency or school~~
26 ~~district will be incurred because this act creates a new crime or~~
27 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
28 ~~for a crime or infraction, within the meaning of Section 17556 of~~
29 ~~the Government Code, or changes the definition of a crime within~~
30 ~~the meaning of Section 6 of Article XIII B of the California~~
31 ~~Constitution.~~